IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 20.05.2019

FAO No.1995 of 2016 (O&M)

Iffco Tokio Insurance Co. Ltd. ... Appellant

Versus

Gurmail Kaur and others ... Respondents

FAO No.2714 of 2016 (O&M)

Iffco Tokio Insurance Co. Ltd. ... Appellant

Versus

Maya and others ... Respondents

FAO No.2717 of 2016 (O&M)

Iffco Tokio Insurance Co. Ltd. ... Appellant

Versus

Kuldeep Kaur and others ... Respondents

FAO No.6208 of 2017 (O&M)

Kuldeep Kaur and another ... Appellants

Versus

Bhajan Dass and others ... Respondents

FAO No.6222 of 2017 (O&M)

Gurmail Kaur and another ... Appellants

Versus

Bhajan Dass and others ... Respondents

FAO No.6223 of 2017 (O&M)

Maya and another ... Appellants

Versus

Bhajan Dass and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate for the insurance company.

Mr. Anil K. Spehia, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1995, 2714, 2717 of 2016 and 6208, 6222 and 6223 of 2017 as these have emerged out of the same accident dated 16.09.2014 in which Ranjit Singh, Sukhwinder Singh and Balbir Singh sustained injuries that proved fatal.

FAO Nos.1995, 2714 and 2717 of 2016 have been filed by the Iffco Tokio Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeals have been preferred by the claimants seeking enhancement of compensation.

CM No.7670-CII of 2016 in FAO No.1995 of 2016

Heard.

Allowed as prayed for. Delay of 64 days in filing the appeal stands condoned.

FAO Nos.1995 of 2016 and 6222 of 2017

Counsel for the insurance company would inform that the appeal has been filed to assail quantum of compensation as well as findings of the Tribunal on issue No.1 attributing exclusive negligence to Bhajan Dass driver of vehicle No.PB-12-F-8468.

The Tribunal awarded Rs.10,00,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Addition in income for future prospects	50%
3. Multiplier	18
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.9,72,000/-
6. Expenses on funeral	Rs.8000/-
7. Loss of consortium	Rs.20,000/-

Counsel for the insurance company would argue that as all the three deceased namely Ranjit Singh, Sukhwinder Singh and Balbir Singh were travelling on motorcycle bearing No.PB-09-G-8108, in violation of the provisions of Section 128 of the Motor Vehicles Act, 1988 (in short 'the Act'), driver of alleged offending vehicle has wrongly been fastened with exclusive negligence for causing occurrence. It is further argued that negligence to some extent is liable to be attributed to the travellers of the motorcycle for violating the provisions of the Act.

With regard to compensation assessed by the Tribunal, it is argued that the Tribunal has allowed addition in income for future prospects @ 50% as against 40% admissible in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for claimants, on the contrary, has supported findings of the Tribunal on issue No.1. However, he has pressed for enhancement of compensation on the premise that income of the deceased assessed by the Tribunal is on lower side and needs enhancement.

No doubt, three persons namely Ranjit Singh, Balbir Singh and

Sukhwinder Singh were travelling on ill fated motorcycle when they were on their return journey after paying obeisance at Mata Chintpurni. Counsel for the insurance company has failed to point out any materials brought-forth in cross examination of Lachman Singh AW2, an eye-witness to the occurrence examined to discharge onus of issue No.1 in order to prove that negligence in causing the occurrence can be attributed to driver or pillion riders of motorcycle on which Ranjit Singh, Balbir Singh and Sukhwinder Singh were travelling. The mere fact that there were three riders of the motorcycle ipso facto cannot lead to a conclusion that negligence in causing the occurrence can be attributed to the deceased.

The factum of negligence on account of three persons travelling on the motorcycle is entirely a different matter vis-a-vis there being a traffic offence committed by the deceased by using the motorcycle for three persons as against permitted limit of two persons. In this view of the matter, I find it difficult to differ with findings of the Tribunal attributing exclusive negligence to driver of the offending vehicle and accordingly the same are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal. The deceased was 19 years old at the time of occurrence. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6700/- per month. Claimants shall be entitle to addition in income for future prospects @ 40% in the light of judgment in **Pranay Sethi and**

others's case (supra). Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,13,040/- [(6700 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Loss of estate	Rs.15,000/-
2. Funeral expenses	Rs.15,000/-

Total compensation is Rs.10,43,040/- and the additional amount is Rs.43,040/- (10,43,040 – 10,00,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 551 days in filing the appeal (FAO No.6222 of 2017), to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeals are disposed of in the aforesaid terms.

FAO Nos.2717 of 2016 and 6208 of 2017

In view of findings recorded in FAO Nos.1995 of 2016 and 6222 of 2017, the additional amount is Rs.43,040/- (10,43,040 – 10,00,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 551 days in filing the appeal (FAO No.6208 of 2017), to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeals are disposed of in the aforesaid terms.

FAO Nos.2714 of 2016 and 6223 of 2017

In view of findings recorded in FAO Nos.1995 of 2016 and 6222 of 2017, the additional amount is Rs.43,040/- (10,43,040 – 10,00,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 551 days in filing the appeal (FAO No.6223 of 2017), to mother of the deceased, to be invested in fixed deposit for a period of three years.

The appeals are disposed of in the aforesaid terms.

20.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No